

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARIA CONCEPCION NIETO DE  
GIANINI,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>

Defendant.

Case No. 1:21-cv-00416-CDB (SS)

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
AND REMANDING ACTION PURSUANT  
TO SENTENCE FOUR OF 42 U.S.C.  
§405(g)

(Doc. 18)

Plaintiff Maria Concepcion Nieto de Gianini ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security ("Commissioner" or "Defendant") denying her application for disability benefits under the Social Security Act. (Doc. 1). The matter is currently before the Court on the Administrative Record ("AR") and the parties' briefs, which were submitted without oral argument. (Docs. 12, 18, 21).<sup>2</sup> The Court finds and rules as follows.

---

<sup>1</sup> On February 19, 2025, Lee Dudek was named Acting Commissioner of the Social Security Administration. *See* <https://www.ssa.gov/news/press/releases/2025/#2025-02-19> (last visited March 12, 2025). He therefore is substituted as the Defendant in this action. *See* 42 U.S.C. § 405(g) (referring to the "Commissioner's Answer"); 20 C.F.R. § 422.210(d) ("the person holding the Office of the Commissioner shall, in [their] official capacity, be the proper defendant.").

<sup>2</sup> On April 26, 2021, after both parties consented to the jurisdiction of a magistrate judge for all further proceedings in this action, including trial and entry of judgment, the matter was reassigned pursuant to 28 U.S.C. § 636(c)(1). (Doc. 10).

1 **I. BACKGROUND**

2 **A. Administrative Proceedings and ALJ's Decision**

3 On June 9, 2017, Plaintiff applied for Supplemental Security Income (SSI) with an alleged  
4 onset date of June 28, 2016. (Doc. 18 at 6); (Doc. 21 at 5); (AR 34, 225-34). Plaintiff's claim was  
5 initially denied on September 29, 2017, and again upon reconsideration on February 1, 2018. (AR  
6 167-71, 174-78). Plaintiff requested a hearing before an Administrative Law Judge on February  
7 20, 2018. (AR 179-80). Jennifer B. Millington, the Administrative Law Judge ("ALJ"), held a  
8 video hearing on November 4, 2019, where Plaintiff testified with the assistance of non-attorney  
9 representative Malinda Davies and a Spanish language interpreter. (AR 8-15, 52-72). Impartial  
10 vocational expert Pat Pauline also testified at the hearing. (AR 69-71). At the hearing, Plaintiff  
11 amended her alleged onset date to June 9, 2017. (AR 34). The ALJ issued an unfavorable decision  
12 on December 9, 2019, finding Plaintiff was not disabled. (AR 31-52). The Appeals Council denied  
13 Plaintiff's request for review on June 3, 2020, rendering the ALJ's decision as the final decision of  
14 the Commissioner. (AR 5-12, 222-24). Plaintiff subsequently filed this action seeking judicial  
15 review of the ALJ's decision. (Doc. 1).

16 In the decision, the ALJ considered Plaintiff's claims using the five-step sequential  
17 evaluation required by C.F.R. § 404.1520(a). (AR 36). At step one, the ALJ found that Plaintiff  
18 had not engaged in substantial gainful activity since June 9, 2017, the alleged onset date and  
19 application date. (AR 37). Because Plaintiff had a prior decision from an ALJ finding that she was  
20 not disabled, the ALJ considered the implications of that prior decision pursuant to Acquiescence  
21 Ruling 97-4(9) and *Chavez v. Bowen*, 844 F.2d 691 (9th Cir. 1988). (AR 34). The ALJ found  
22 pursuant to *Chavez* that there is new and material evidence supporting a change in Plaintiff's work  
23 activity, so the prior finding was not adopted. The ALJ found that Plaintiff worked after the  
24 application date but this work did not rise to the level of substantial gainful activity. (AR 37).

25 At step two, the ALJ found that Plaintiff has the following severe impairments:  
26 osteoarthritis of both knees; chondromalacia patella; migraine headaches; asthma; and multilevel  
27 degenerative disc disease of the spine. (AR 38). The ALJ determined that Plaintiff's medically  
28 determinable impairments ("MDIs") significantly limit her ability to perform basic work activities

1 as required by Social Security Ruling (“SSR”) 85-28. (AR 38). Considering the record evidence,  
 2 the ALJ determined that Plaintiff’s asthma is not a severe impairment under SSR 85-25 because it  
 3 did not more than minimally limit her ability to perform work-related activities. (AR 38) (citing  
 4 B1F, B3F, B8F, B16F, B19F). Further, the ALJ determined that because Plaintiff’s elastofibromas,  
 5 status post excision, caused no more than mild limitations in her ability to work, they are not severe  
 6 impairments. (*Id.*) (citing B1F, B6F, B9F, B16F, B18F, B19F).

7 The ALJ noted she considered all complaints of back pain and associated symptoms, and  
 8 all of Plaintiff’s MDIs, including those that are not severe, in assessing Plaintiff’s residual  
 9 functioning capacity (“RFC”). (AR 38). The ALJ found that Plaintiff’s mental MDIs of post-  
 10 traumatic stress disorder (PTSD), anxiety disorder, and major depressive disorder, considered  
 11 singly and in combination, do not cause more than minimal limitation in Plaintiff’s ability to  
 12 perform basic mental work activities and are therefore non-severe. In making this finding, the ALJ  
 13 considered whether the four broad functional areas of mental functioning listed in the “paragraph  
 14 B” criteria are satisfied.<sup>3</sup> (AR 39). As to understanding, remembering or applying information,  
 15 the ALJ found that Plaintiff has a mild limitation. As to interacting with others, the ALJ found that  
 16 Plaintiff has a mild limitation. As to concentrating, persisting or maintaining pace, the ALJ found  
 17 that Plaintiff has a mild limitation. As to adapting or managing oneself, the ALJ found that Plaintiff  
 18 has a mild limitation. Because these mental impairments do not cause at least two “marked”  
 19

---

20 <sup>3</sup> The “paragraph B” criteria evaluate mental impairments in the context of four broad areas  
 21 of functioning: (1) understanding, remembering, or applying information; (2) interacting with  
 22 others; (3) concentrating, persisting, or maintaining pace; and (4) adapting or managing oneself.  
 23 20 C.F.R. § Pt. 404, Subpt. P, App. 1. The severity of the limitation a claimant has in each of the  
 24 four areas of functioning is identified as either “no limitation,” “mild,” “moderate,” “marked,” or  
 25 “extreme.” (*Id.*). To satisfy the paragraph B criteria, a claimant must have an “extreme” limitation  
 26 in at least one of the areas of mental functioning, or a “marked” limitation in at least two of the  
 27 areas of mental functioning. (*Id.*). An “extreme” limitation is the inability to function  
 28 independently, appropriately, or effectively, and on a sustained basis. (*Id.*). A “marked” limitation  
 is a seriously limited ability to function independently, appropriately, or effectively, and on a  
 sustained basis. (*Id.*). A “moderate” degree of mental limitation means that functioning in this area  
 independently, appropriately, effectively, and on a sustained basis is “fair.” (*Id.*) And a “mild”  
 degree of mental limitation means that functioning in this area independently, appropriately,  
 effectively, and on a sustained basis is “slightly limited.” (*Id.*); see *Carlos v. Comm’r of Soc. Sec.*,  
 No. 1:21-cv-00517-SAB, 2023 WL 1868870, at \*4 n.7 (E.D. Cal. Feb. 9, 2023).

1 limitations or one “extreme” limitation, the ALJ determined that the “paragraph B” criteria are not  
2 satisfied. (AR 40).

3 At step three, the ALJ found that Plaintiff does not have an impairment or combination of  
4 impairments that meets or medically equals the severity of one of the listed impairments in 20  
5 C.F.R. Part 404, Subpart P, Appendix 1. (AR 40-41). The ALJ discussed the reasoning as to why  
6 each impairment failed to meet the requirements of the listings. (AR 40-41).

7 Prior to step four, the ALJ found that Plaintiff has the RFC to perform light work as defined  
8 in 20 C.F.R. 416.967(b) except she can only frequently climb ramps and stairs, balance, kneel,  
9 crouch, and crawl, and can only occasionally push and pull or reach above shoulder level bilaterally.  
10 (AR 41). In considering Plaintiff’s symptoms and the extent to which these symptoms can  
11 reasonably be accepted as consistent with objective medical evidence and other evidence, the ALJ  
12 noted she followed the two-step process as set forth in the 20 C.F.R. 416.929, and Social Security  
13 Ruling (“SSR”) 16-3p and considered the medical opinion(s) and prior administrative medical  
14 finding(s) in accordance with 20 C.F.R. 416.920c. First, the ALJ determined whether there is an  
15 underlying medically determinable physical or mental impairment, *i.e.*, an impairment or  
16 impairments that can be shown by medically acceptable clinical or laboratory diagnostic techniques  
17 that could reasonably be expected to produce Plaintiff’s symptoms. Second, the ALJ evaluated the  
18 intensity, persistence, and limiting effects of Plaintiff’s symptoms to determine the extent to which  
19 they limit Plaintiff’s work-related activities. For this purpose, whenever statements about the  
20 intensity, persistence, or functionally limiting effects of symptoms are not substantiated by  
21 objective medical evidence, the ALJ considered other evidence in the record to determine if  
22 Plaintiff’s symptoms limit the ability to do work-related activities. (AR 41).

23 The ALJ then discussed her findings regarding Plaintiff’s physical and mental impairments,  
24 considering Plaintiff’s hearing testimony, medical evidence, treatment history, activities of daily  
25 living (“ADLs”), and medical opinion evidence. (AR 41-46). After summarizing the medical  
26 evidence, the ALJ found that Plaintiff’s impairments could reasonably be expected to cause some  
27 of her alleged symptoms but the intensity, persistence, and limiting effects of those symptoms were  
28 not consistent with the medical evidence in the record. (AR 42).

1 The ALJ reasoned as follows:

2 [Plaintiff] regularly suffered back, neck, and knee pain, which worsened with  
3 movements including lifting and prolonged standing, walking, or sitting.  
4 Therefore, [she] would be limited to light exertional work. Moreover, [Plaintiff's]  
5 back and knee pain would limit her to only frequently kneeling, crouching, and  
6 crawling, frequently climbing ramps or stairs, but occasionally bending, stooping,  
7 or climbing ladders, ropes, or scaffolds. Additionally, to avoid exacerbating her  
8 neck and shoulder pain, [she] should only occasionally reach overhead or push  
9 and/or pull bilaterally. Additionally, [her] postural limitations would help avoid  
10 exacerbating her migraines, and her limitations on climbing address her intermittent  
11 dizziness with migraines.

12 [She] would not require more restrictive limitations, however. For example, [she]  
13 was able to climb stairs when using railings and had grossly normal balance. In  
14 addition, she was observed to be able to stand from a seated position and get onto  
15 and off of an examination table. [She] also maintained a normal gait and station,  
16 and she did not ambulate with an assistive device.

17 Moreover, [she] had grossly normal ranges of motion in her back, neck, and  
18 bilateral upper and lower extremities. Similarly, her hands and fingers also had  
19 normal ranges of motion and she had good hand coordination. She was also able  
20 to make a fist. [She] also had normal muscle bulk and tone with grossly normal  
21 strength. For example, during 2017, [she] reported that she was able to lift two  
22 grocery bags and sit or stoop without problem. [She] also maintained normal motor  
23 and sensory function. Overall, [she] regularly appeared to be in no acute distress.  
24 This is consistent with her testimony that her medications helped lessen her  
25 physical pain, but it would not go away so she would be limited to the above-  
26 described residual functional capacity.

27 [Her] activities of daily living are also consistent with her residual functional  
28 capacity. For example, [she] was able to do her own cooking and cleaning, as well  
as drive, shop, and perform her personal care activities. She reported that she would  
do such activities more slowly, but she preferred to be independent and no one  
helped her around the house. However, her daughter would help her lift heavier  
groceries, like large containers of water.

21 (AR 43) (citations omitted).

22 After summarizing the medical evidence of record regarding Plaintiff's symptoms and  
23 impairments (AR 41-43), the ALJ turned to the medical opinions and prior administrative medical  
24 findings of record. The ALJ found the prior administrative findings of disability determinatives  
25 services consultants K. Mohan, M.D. and S. Garcia, M.D. to be mostly persuasive as to Plaintiff's  
26 physical impairments. In support, the ALJ noted that though Plaintiff experienced back, neck, and  
27 knee pain, which worsened with movements including lifting and bending, she had grossly normal  
28 strength and grossly normal ranges of motion in her back, neck, and bilateral upper and lower

1 extremities, and was therefore limited to light exertional work but she could frequently kneel,  
2 crouch, and crawl, but only occasionally reach overhead. (AR 44) (citations omitted).

3 Emmanuel Fabella, M.D. evaluated Plaintiff and opined that: Plaintiff could lift and carry  
4 20 pounds occasionally and ten pounds frequently, stand and walk for four hours; was not limited  
5 as to sitting; could occasionally climb, balance, and kneel, but should avoid climbing ladders or  
6 working at heights; and that she should avoid exposure to cold. (AR 44) (citations omitted). The  
7 ALJ found the administrative findings of evaluating physician Dr. Fabella less persuasive because  
8 it is not fully consistent with the record evidence. In support, the ALJ noted that Plaintiff: had  
9 normal gait and station; did not ambulate with an assistive device; had grossly normal strength,  
10 including in her lower extremities; was able to climb stairs when using railings and had grossly  
11 normal balance; and she therefore could stand and walk for up to six hours and frequently climb  
12 stairs and ramps, balance, kneel, and occasionally climb ladders. (AR 44) (citations omitted). The  
13 ALJ further discounted Dr. Fabella's opinion because Dr. Fabella was able to review Plaintiff's  
14 diagnostic imaging but was unable to review her other medical records, and therefore found it not  
15 fully supported by Plaintiff's longitudinal functioning, and the opinion was not fully supported by  
16 Dr. Fabella's examination notes, which include findings of normal strength and ranges of motion.  
17 (AR 44).

18 The ALJ found that the administrative findings of physician assistant David J. Oberst, P.A.  
19 not persuasive, finding it is intended to be temporary in nature during Plaintiff's recovery from  
20 surgery and is not reflective of Plaintiff's functioning over the entire period at issue, and the opinion  
21 is not supported by Mr. Oberst's own treatment notes. (AR 45). In support, the ALJ noted Plaintiff  
22 had normal muscle bulk and tone with grossly normal strength, maintained normal motor and  
23 sensory function, and she therefore could lift and carry light exertional movements. (AR 45). The  
24 ALJ found the administrative findings of evaluating physician Robert Wagner, M.D. only  
25 somewhat persuasive because it is generally inconsistent with the record evidence. The ALJ noted  
26 that though Plaintiff experienced back, neck, and knee pain which worsened with movements  
27 including lifting and bending, she should only perform light exertional work with postural  
28 limitations and should only occasionally reach overhead or push and pull with her bilateral

1 extremities. The ALJ further found Dr. Wagner's opinion was not fully supported by examination  
2 notes which include a finding of both neck and low back strains and that Dr. Wagner did not indicate  
3 whether he was able to review Plaintiff's other medical records. (AR 45).

4 The ALJ noted that the record includes a number of reports from various physicians and  
5 psychologists who examined or treated Plaintiff exclusively in connection with her remote work  
6 injury and found them neither valuable nor persuasive under 20 C.F.R. 416.920b(c)(3). (AR 45).  
7 The ALJ determined that the RFC limitations assessed are supported by the objective medical  
8 evidence, including Plaintiff's positive response to conservative treatment, her ADLs, and the  
9 persuasiveness of the medical opinions. (AR 46).

10 At step four, the ALJ determined that Plaintiff is capable of performing past relevant work  
11 (PRW) as a housekeeper as it is generally performed because this work does not require the  
12 performance of work-related activities precluded by Plaintiff's RFC and she performed the work at  
13 substantial gainful activity. (AR 46). The ALJ found that Plaintiff worked as a housekeeper in a  
14 hotel from October 2014 to June 2016, satisfying the recency requirement of PRW and the  
15 durational requirement for a Specific Vocational Preparation rating (SVP) of 2 position. However,  
16 the ALJ could not determine Plaintiff could undertake her PRW as actually performed. The  
17 vocational expert testified that Plaintiff would be able to perform this PRW within the RFC. The  
18 ALJ noted that the vocational expert did not specify any portions of her testimony that contradicted  
19 with the Dictionary of Occupational Titles (DOT) and the ALJ therefore accepted the testimony in  
20 accordance with SSR 00-4p. The ALJ noted that the DOT does not differentiate between directions  
21 of reaching, and although the DOT lists housekeeping as requiring frequent reaching, the ALJ did  
22 not find it inconsistent with the limitation to only occasional overhead reaching. (AR 46-47). The  
23 ALJ therefore concluded a finding of non-disability under 20 C.F.R. § 416.920(f). (AR 47).

24 After the Appeals Council denied review, Plaintiff initiated this action and ultimately filed  
25 the instant motion for summary judgment on February 28, 2022. (Doc. 18). Defendant filed an  
26 opposition on May 4, 2022. (Doc. 21).

27 **B. Medical Record and Hearing Testimony**

28 The relevant hearing testimony and medical record were reviewed by the Court and will be



1 referenced below as necessary to this Court's decision.

2 **II. LEGAL STANDARD**

3 A district court's review of a final decision of the Commissioner of Social Security is  
4 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the  
5 Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is  
6 based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence"  
7 means "relevant evidence that a reasonable mind might accept as adequate to support a  
8 conclusion." (*Id.* at 1159) (quotation and citation omitted). Stated differently, substantial evidence  
9 equates to "more than a mere scintilla[,] but less than a preponderance." (*Id.*) (quotation and  
10 citation omitted). "It is such relevant evidence as a reasonable mind might accept as adequate to  
11 support a conclusion." *Healy v. Astrue*, 379 Fed. Appx. 643, 645 (9th Cir. 2010). In determining  
12 whether the standard has been satisfied, a reviewing court must consider the entire record as a whole  
13 rather than searching for supporting evidence in isolation. (*Id.*).

14 The court will review only the reasons provided by the ALJ in the disability determination  
15 and may not affirm the ALJ on a ground upon which she did not rely. Social Security Act § 205,  
16 42 U.S.C. § 405(g). In reviewing a denial of benefits, a district court may not substitute its  
17 judgment for that of the Commissioner. "The court will uphold the ALJ's conclusion when the  
18 evidence is susceptible to more than one rational interpretation." *Tommasetti v. Astrue*, 533 F.3d  
19 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ's decision on account  
20 of an error that is harmless. (*Id.*). An error is harmless where it is "inconsequential to the [ALJ's]  
21 ultimate nondisability determination." (*Id.*) (quotation and citation omitted). The party appealing  
22 the ALJ's decision generally bears the burden of establishing that it was harmed. *Shinseki v.*  
23 *Sanders*, 556 U.S. 396, 409-10 (2009).

24 A claimant must satisfy two conditions to be considered "disabled" and eligible for benefits  
25 within the meaning of the Social Security Act. First, the claimant must be "unable to engage in any  
26 substantial gainful activity by reason of any medically determinable physical or mental impairment  
27 which can be expected to result in death or which has lasted or can be expected to last for a  
28 continuous period of not less than twelve months." 42 U.S.C. § 1382c(a)(3)(A). Second, the



1 claimant's impairment must be "of such severity that he is not only unable to do his previous  
2 work[,] but cannot, considering his age, education, and work experience, engage in any other kind  
3 of substantial gainful work which exists in the national economy." 42 U.S.C. §  
4 1382c(a)(3)(B).

5 The Commissioner has established a five-step sequential analysis to determine whether a  
6 claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the  
7 Commissioner considers the claimant's work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant  
8 is engaged in "substantial gainful activity," the Commissioner must find that the claimant is not  
9 disabled. 20 C.F.R. § 416.920(b).

10 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step  
11 two. At this step, the Commissioner considers the severity of the claimant's impairment. 20 C.F.R.  
12 § 416.920(a)(4)(ii). If the claimant suffers from "any impairment or combination of impairments  
13 which significantly limits [his or her] physical or mental ability to do basic work activities," the  
14 analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not  
15 satisfy this severity threshold, however, the Commissioner must find that the claimant is not  
16 disabled. (*Id.*).

17 At step three, the Commissioner compares the claimant's impairment to impairments  
18 recognized by the Commissioner to be so severe as to preclude a person from engaging in  
19 substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more  
20 severe than one of the enumerated impairments, the Commissioner must find the claimant disabled  
21 and award benefits. 20 C.F.R. § 416.920(d).

22 If the severity of the claimant's impairment does not meet or exceed the severity of the  
23 enumerated impairments, the Commissioner must pause to assess the claimant's "residual  
24 functional capacity," defined generally as the claimant's ability to perform physical and mental  
25 work activities on a sustained basis despite his or her limitations (20 C.F.R. § 416.945(a)(1)).

26 At step four, the Commissioner considers whether, in view of the claimant's RFC, the  
27 claimant is capable of performing work that he or she has performed in the past (past relevant  
28 work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work,

the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of performing such work, the analysis proceeds to step five.

At step five, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing other work in the national economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education, and past work experience. (*Id.*). If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. (*Id.*).

The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### **III. ISSUES AND ANALYSIS**

Plaintiff seeks judicial review of the Commissioner's final decision denying her application and raises the following issues:

1. Substantial evidence does not support the ALJ's rejection of examining physician Dr. Fabella's RFC limitation to four hours standing;
2. Substantial evidence does not support the ALJ's physical RFC limitation regarding reaching, lifting, pushing, pulling, and carrying;
3. The ALJ harmfully erred by failing to identify and resolve an apparent conflict between the DOT and VE testimony per SSR 00-4p; and
4. The ALJ harmfully erred by failing to find MDIs of mental impairments to be not "severe" impairments at Step Two.

*See* (Doc. 18 at 6). The Court addresses the issues in turn below.

///

**A. Whether Substantial Evidence Supports the ALJ’s Rejection of Examining Physician Dr. Fabella’s RFC Limitation to Four Hours Standing**

*1. Governing Authority*

Because Plaintiff applied for benefits after March 27, 2017, his claim is governed by the agency’s current regulations governing an ALJ’s evaluation of medical opinions. 20 C.F.R. § 416.920c. Under the regulations, the Commissioner does “not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical findings (s), including those from [a claimant’s] medical sources.” 20 C.F.R. §§ 404.1520c(a), 416.920c(a). Thus, the regulations require an ALJ to apply the same factors to all medical sources when considering medical opinions and no longer mandate particularized procedures that the ALJ must follow in considering opinions from treating sources. *See* 20 C.F.R. § 404.1520c(b) (the ALJ “is not required to articulate how [he] considered each medical opinion or prior administrative medical finding from one medical source individually.”); *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017).

Instead, “[w]hen a medical source provides one or more medical opinions or prior administrative medical findings, [the ALJ] will consider those medical opinions or prior administrative medical findings from that medical source together using” the following factors: (1) supportability; (2) consistency; (3) relationship with the claimant; (4) specialization; [and] (5) other factors that “tend to support or contradict a medical opinion or prior administrative medical finding.” 20 C.F.R. §§ 404.1520c(a), (c)(1)-(5). The most important factors to be applied in evaluating the persuasiveness of medical opinions and prior administrative medical findings are supportability and consistency. 20 C.F.R. §§ 404.1520c(a), (b)(2). Regarding the supportability factor, the regulation provides that the “more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s), the more persuasive the medical opinions ... will be.” 20 C.F.R. § 404.1520c(c)(1). In other words, “[s]upportability means the extent to which a medical source supports the medical opinion by explaining the ‘relevant ... objective medical evidence.’” *Woods v. Kijakazi*, 32 F.4th 785, 791-92 (9th Cir. 2022) (quoting 20 C.F.R. § 404.1520c(c)(1)). Regarding the consistency factor, the “more

1 consistent a medical opinion(s) is with the evidence from other medical sources and nonmedical  
 2 sources in the claim, the more persuasive the medical opinion(s) ... will be.” 20 C.F.R. §  
 3 404.1520c(c)(2).

4 The ALJ must explain in his decision how persuasive he finds a medical opinion and/or a  
 5 prior administrative medical finding based on these two factors. 20 C.F.R. § 404.1520c(b)(2). The  
 6 ALJ “may, but [is] not required to, explain how [he] considered the [other remaining factors],”  
 7 except when deciding among differing yet equally persuasive opinions or findings on the same  
 8 issue. 20 C.F.R. § 404.1520c(b)(2)-(3). Further, the ALJ is “not required to articulate how [he]  
 9 considered evidence from nonmedical sources.” 20 C.F.R. § 404.1520c(d). Nonetheless, the Court  
 10 must determine whether the ALJ adequately explained how he considered the supportability and  
 11 consistency factors relative to medical opinions and whether the reasons were free from legal error  
 12 and supported by substantial evidence. *Woods*, 32 F.4th at 792-93.

## 13 2. *Dr. Fabella’s Opinion*

14 On September 5, 2017, Plaintiff attended an internal medicine consultative evaluation with  
 15 Dr. Fabella, an internal medicine physician with the Department of Social Services. (AR 44, 445-  
 16 50) (citations omitted). Dr. Fabella reported Plaintiff’s history of present illness: she is a 55-year-  
 17 old female with diffuse arthralgias that had been progressive since 2001; she has posterior neck  
 18 pain described as dull and sharp, occasional to frequent, and varying in intensity from mild to severe  
 19 depending on the activity, and nonradiating; she has some pain and popping of the left shoulder  
 20 blade with movement, right lower back pain, bilateral knee pains and elbow pains of similar  
 21 character but of less severity; her knees particularly hurt when she goes up and down stairs; she can  
 22 now only walk ten minutes straight at a time without stopping and can lift two grocery bags; she  
 23 has no problem with sitting or stooping; and she told that she has osteoarthritis by Adventist Health  
 24 Clinic. (AR 445). Dr. Fabella noted that “[t]he only medical record available for [his] review is a  
 25 cervical spine x-ray demonstrating multilevel degenerative joint disease and disc disease.” (*Id.*).

26 Dr. Fabella made the following findings through the physical examination: Plaintiff is able  
 27 to generate 12 pounds of force in either hand; her gait is characterized by mild stooping but is  
 28 otherwise normal; she does not require the use of assistive devices for ambulation; she is able to

1 walk on her toes and heels with mild difficulty; examination of the cervical spine shows  
2 paracervical muscle spasm and decreased range of motion with bilateral flexion to 35 degrees and  
3 left lateral rotation decreased to 50 degrees, and negative for Spurling's sign; examination of the  
4 back shows mild protuberance of medial edge of the left scapula, suggestive of mild scapular  
5 winging (which may be secondary to muscle dysfunction; examination of the lower back shows no  
6 spinal or paraspinal tenderness, intact range of motion with forward flexion of 90 degrees achieved  
7 and negative straight leg raising test. (AR 448). As to the upper extremities (*i.e.*, shoulders, elbows,  
8 wrists, and hands), Dr. Fabella reported Plaintiff had range of motion that is grossly within normal  
9 limits bilaterally. (*Id.*). As to the lower extremities, Dr. Fabella reported that Plaintiff has range of  
10 motion of the hips and ankles grossly within normal limits bilaterally, and examination of the knees  
11 shows no effusion but there is mild to moderate grinding crepitus in both knees and some decrease  
12 in range of motion with flexion limited to 95 degrees. (*Id.*). Dr. Fabella reported Plaintiff had  
13 normal bulk and tone without atrophy, and normal strength without focal motor deficits. (*Id.*).

14 Dr. Fabella made the following impressions: cervicgia with decreased range of motion  
15 and paracervical muscle spasm with x-ray showing multilevel DJD and DDD; examination findings  
16 consistent with mild left scapular winging (Plaintiff is undergoing x-ray and MRI ordered by her  
17 primary care provider); low back pain and intact range of motion and no evidence of neurologic  
18 compromise, probably secondary to DJD; and bilateral knee pains with decreased range of motion  
19 and grinding crepitus probably secondary to DJD. (AR 449).

20 Thus, Dr. Fabella assessed the following physical limitations: Plaintiff could lift and carry  
21 20 pounds occasionally and ten pounds frequently, limited due to back and knee pains; she could  
22 walk and stand for four hours out of an eight-hour day secondary to back and knee pains; she has  
23 no restrictions with sitting; she did not need an assistive device; she is able to climb, balance, kneel,  
24 or crawl only occasionally secondary to back and knee pains; she is able to walk on uneven terrain  
25 occasionally but climbing ladders and working at heights is best avoided due to back and knee  
26 pains; and she should avoid cold exposure due to DJD. (*Id.*). Dr. Fabella disclaimed that her  
27 "conclusions relate to an internal medicine assessment of alleged disability" and "should not be  
28 misconstrued as a complete physical examination for general medical purposes" and the "findings

1 on physical examination are based both on formal testing, as well as by direct observation of  
2 [Plaintiff].” (AR 450).

3 3. *Parties’ Contentions*

4 Plaintiff argues that the ALJ erred in finding that Plaintiff could stand and walk for up to  
5 six hours and frequently climb stairs and ramps, balance, and kneel, and occasionally climb ladders,  
6 where the ALJ failed to consider the evidence as a whole including evidence from Dr. Fabella and  
7 other record evidence that documented Plaintiff’s limitations to her ability to stand and walk based  
8 on her spine and knee impairments. (Doc. 18 at 13). Specifically, Plaintiff contends the ALJ  
9 improperly rejected Dr. Fabella’s RFC limitation to four hours of walking in failing to discuss the  
10 examination findings of Plaintiff’s limitations with standing and walking and by “cherry pick[ing]  
11 findings in the record absent any discussion of their relevance or significance[.]” (*Id.*). Plaintiff  
12 contends the ALJ failed to discuss the significance of the cherry-picked findings which are not at  
13 issue, including with regard to Plaintiff’s normal gait and balance, lack of need for an assistive  
14 device, “ability to climb[] stairs with the use of a handrail[,]” or her “grossly normal strength” and  
15 “normal muscle bulk and tone[.]” (*Id.* at 14, 15). Plaintiff therefore argues that the ALJ erred by  
16 cherry-picking facts and failing to link those facts when resolving the medical opinions in the  
17 record. (*Id.* at 18).

18 Defendant contends that the ALJ properly concluded the opinion of Dr. Fabella was  
19 unpersuasive because the ALJ considered the inconsistencies between Dr. Fabella’s report and  
20 other medical evidence. (Doc. 21 at 28). Defendant contends the ALJ “highlighted some of the  
21 normal examination findings” such as normal gait, station, and strength that contrasted with the  
22 observations of Dr. Fabella. (*Id.*). Second, Defendant contends the ALJ observed that Dr. Fabella’s  
23 opinion was not fully supported by his own examination as the opinion “documented no more than  
24 mild gait abnormalities, no balance difficulties, and no loss of lower extremity streng[th] supportive  
25 with an inability to stand and/or walk for six hours during an eight-hour day[.]” (*Id.* at 29). Third,  
26 Defendant contends the ALJ properly discounted Dr. Fabella’s opinion because Dr. Fabella  
27 reviewed a cervical spine x-ray record that “was dated prior to the alleged onset date of disability”  
28 and “the doctor did not have access to later records[.]” (*Id.*). Fourth, Defendant contends the ALJ,

1 in reading the decision as whole, evaluated and found persuasive other opinion evidence that found  
 2 “Plaintiff could stand and/or walk for six hours during an eight-hour workday rather than only four  
 3 hours as was proposed by Dr. Fabella.” (*Id.*).

#### 4 4. Analysis

5 As to supportability, the ALJ found Dr. Fabella’s opinion was not fully supported because:  
 6 (1) though Dr. Fabella was able to review Plaintiff’s diagnostic imaging, he was unable to review  
 7 her other medical records, and thus the opinion is not supported by Plaintiff’s longitudinal  
 8 functioning; and (2) Dr. Fabella’s examination notes, which include findings of normal strength  
 9 and ranges of motion, do not fully support the opinion. (AR 44).

10 As Plaintiff correctly argues, the ALJ failed to discuss the significance or relevance of  
 11 “cherry-picked” findings that are not at issue in determining whether Plaintiff is limited to standing  
 12 and walking for only four hours, including findings as to Plaintiff’s normal gait, balance, “grossly  
 13 normal” strength, while failing to consider other findings that support Dr. Fabella’s assessed  
 14 limitations. *Diedrich v. Berryhill*, 874 F.3d 634, 642 (9th Cir. 2017) (improper for ALJ to “cherry-  
 15 pick” from medical evidence as opposed to undertaking a “broader development” of the evidence  
 16 in its entirety). Specifically, the ALJ failed to discuss Dr. Fabella’s findings as to Plaintiff’s “mild  
 17 to moderate” knee pain and decreased range of motion which inextricably affect a person’s ability  
 18 to sustain standing and walking, while failing to explain how normal findings in gait and balance  
 19 are proper reasons to find Dr. Fabella’s opinion less persuasive. *See Gonzales v. Kijakazi*, No.  
 20 1:20-cv-1530-SKO, 2022 WL 267438, at \*12 (E.D. Cal. Jan. 28, 2022) (“[C]urrent Ninth Circuit  
 21 law prohibit[s] cherry-picking and requir[es] a detailed and thorough summary of conflicting  
 22 evidence, and an interpretation of findings thereon, [and] the ALJ must explicitly address evidence  
 23 that supports and is consistent with a less-than persuasive medical opinion[], and should this  
 24 evidence fail to persuade, the ALJ must provide legally sufficient reasons.”). However, the Court  
 25 finds that the ALJ appropriately determined that Dr. Fabella’s opinion was not supported by  
 26 Plaintiff’s longitudinal functioning because “[t]he only medical record available for [his] review  
 27 [was] a cervical spine x-ray demonstrating multilevel degenerative joint disease and disc disease”  
 28 (AR 445), and Dr. Fabella therefore did not have other relevant, objective medical evidence to



1 explain and otherwise “support his ... medical opinion(s)” such that the ALJ could find the opinion  
2 persuasive. 20 C.F.R. § 416.920(c)(1); *see Woods*, 32 F.4th at 791-92. Thus, the ALJ properly  
3 discounted Dr. Fabella’s opinion as to a lack of supportability on this basis.

4       Regarding consistency, the ALJ concluded that Dr. Fabella’s assessment is not consistent  
5 with the evidence in the record, including as to findings that Plaintiff had normal gait and station,  
6 did not require an assistive device to ambulate, had grossly normal strength in her lower extremities,  
7 and was able to climb stairs when using railings and had grossly normal balance. (AR 44). The  
8 ALJ therefore found Dr. Fabella’s findings were inconsistent with the ALJ’s determination that  
9 Plaintiff “could stand and walk for up to six hours and frequently climb stairs and ramps, balance,  
10 and kneel, and occasionally climb ladders.” (*Id.*). However, the Court finds the ALJ’s bare recitals  
11 to neutral findings of the record does not constitute substantial evidence of any material  
12 inconsistency between Dr. Fabella’s abnormal findings as to Plaintiff’s limitations, such as her  
13 assessments that she should avoid climbing ladders, work at heights, and was limited to stand and  
14 walk for four hours. *See Johnson v. Berryhill*, No. C17-5623-MAT, 2018 WL 3008879, at \*4  
15 (W.D. Wash. June 15, 2018) (“[T]he existence of other normal findings does not negate Dr.  
16 Wingate’s examination.”). Additionally, the ALJ failed to show how or why any of Dr. Fabella’s  
17 findings are inconsistent with any other medical source in the record, such as the other medical  
18 opinions he found persuasive. *Woods*, 32 F.4th at 792. The ALJ did not acknowledge the  
19 consistency of Dr. Fabella’s findings with that of Dr. Mohan and Dr. Garcia as to findings that  
20 Plaintiff could lift, carry, push and/or pull 20 pounds occasionally and ten pounds frequently, and  
21 other normal findings. Thus, the ALJ improperly discounted Dr. Fabella’s opinion based on alleged  
22 inconsistency with the record.

23       Because the ALJ properly found Dr. Fabella’s opinion lacked supportability as he was  
24 unable to review Plaintiff’s medical records aside from diagnostic imaging, the ALJ permissibly  
25 found the opinion not persuasive and not supported by substantial evidence. In light of this, the  
26 ALJ’s failure to discuss the significance or relevance of discrete adverse findings in considering  
27 supportability and his erroneous finding that Dr. Fabella’s opinion was inconsistent with the record  
28 constitutes harmless error. *See Stringer v. Comm’r of Soc. Sec. Admin*, No. CV-22-00387-TUC-

JCH, 2024 WL 1340717, at \*3 (D. Ariz. Mar. 28, 2024) (“even if the ALJ failed to address supportability, the error is harmless because the ALJ adequately addressed consistency”) (citing *Joseph F. v. Kijakazi*, No. ED CV 22-00050-DFM, 2022 WL 17903079, at \*6-7 (C.D. Cal. Oct. 11, 2022) (upholding ALJ’s discounting of medical opinion where his consistency analysis was supported by substantial evidence and finding failure to address supportability factor harmless error; “[u]nder *Woods*, this alone suffices for the ALJ to conclude that each opinion was unpersuasive.”)); *Tracy F. v. O’Malley*, No. 1:22-cv-00233-DCN-DKG, 2024 WL 1701572, at \*3-4 (D. Idaho Apr. 19, 2024) (same); *Tara B. v. Comm’r Soc. Sec.*, No. 2023 WL 4946573, at \*5 (W.D. Wash. Aug. 3, 2023) (same).

**B. Whether Substantial Evidence Supports the ALJ’s Physical RFC Limitation Regarding Reaching, Lifting, Pushing, Pulling, and Carrying**

*1. Governing Authority*

A claimant’s RFC is “the most [the claimant] can still do despite [his or her] limitations.” 20 C.F.R. §§ 404.1545(a), 416.945(a). The RFC assessment is an administrative finding based on all relevant evidence in the record, not just medical evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005). In determining the RFC, the ALJ must consider all limitations, severe and non-severe, that are credible and supported by substantial evidence in the record. (*Id.*). However, an ALJ’s RFC findings need only be consistent with relevant assessed limitations and not identical to them. *See Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1222-23 (9th Cir. 2010) (“Although the ALJ rejected any implication in Dr. Koogler’s evaluation that Turner was disabled, he did incorporate Dr. Koogler’s observations into his residual functional capacity determination. ... These limitations were entirely consistent with Dr. Koogler’s limitation.”). Ultimately, a claimant’s RFC is a matter for the ALJ to determine. *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001).

Plaintiff argues the ALJ erred in assessing her RFC regarding reaching, lifting, pushing, pulling, and carrying because she failed to set forth any clear and convincing reasons for discounting Plaintiff’s symptomology testimony. (Doc. 18 at 17). The ALJ is responsible for determining credibility,<sup>4</sup> resolving conflicts in medical testimony, and resolving ambiguities.

---

<sup>4</sup> SSR 16-3p applies to disability applications heard by the agency on or after March 28,

1 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). A claimant’s statements of pain or other  
 2 symptoms are not conclusive evidence of a physical or mental impairment or disability. 42 U.S.C.  
 3 § 423(d)(5)(A); *see* SSR 16-3p, 2017 WL 5180304, at \*2 (“an individual’s statements of symptoms  
 4 alone are not enough to establish the existence of a physical or mental impairment or disability”);  
 5 *see also Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007) (“An ALJ is not required to believe every  
 6 allegation of disabling pain or other non-exertional impairment.”) (internal quotation marks and  
 7 citation omitted); *Molina v. Astrue*, 674 F.3d 1104, 1104 (9th Cir. 2012) (same), *superseded on*  
 8 *other grounds by* 20 C.F.R. § 404.1502(a). Determining whether a claimant’s testimony regarding  
 9 subjective pain or symptoms is credible requires the ALJ to engage in a two-step analysis. *Id.* at  
 10 1112. The ALJ must first determine if “the claimant has presented objective medical evidence of  
 11 an underlying impairment which could reasonably be expected to produce the pain or other  
 12 symptoms alleged.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (internal  
 13 punctuation and citations omitted). This does not require the claimant to show that his impairment  
 14 could be expected to cause the severity of the symptoms that are alleged, but only that it reasonably  
 15 could have caused some degree of symptoms. *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir.  
 16 1996).

17 If the first step is met and there is no evidence of malingering, “the ALJ must provide  
 18 ‘specific, clear and convincing reasons for’ rejecting the claimant’s testimony.” *Treichler v.*  
 19 *Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (*quoting Smolen*, 80 F.3d at 1281). *See*  
 20 *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1160 (9th Cir. 2008) (noting an adverse  
 21 credibility finding must be based on “clear and convincing reasons”). The ALJ must make findings  
 22 that support this conclusion, and the findings must be sufficiently specific to allow a reviewing  
 23 court to conclude the ALJ rejected the claimant’s testimony on permissible grounds and did not  
 24 arbitrarily discredit the claimant’s testimony. *Moisa v. Barnhart*, 367 F.3d 882, 885 (9th Cir. 2004).

25 The Ninth Circuit does “not require ALJs to perform a line-by-line exegesis of the

---

26  
 27 2016. Ruling 16-3p eliminated the use of the term “credibility” to emphasize that subjective  
 28 symptom evaluation is not “an examination of an individual’s character but an endeavor to  
 “determine how symptoms limit [the] ability to perform work-related activities.” SSR 16-3p, 2017  
 WL 5180304, at \*3.

claimant’s testimony, nor do they require ALJs to draft dissertations when denying benefits.” *Stewart v. Kijakazi*, No. 1:22-cv-00189-ADA-HBK, 2023 WL 4162767, at \*5 (E.D. Cal. Jun. 22, 2023), *findings and recommendations adopted*, 2023 WL 5109769 (E.D. Cal. Aug. 8, 2023); *see Record v. Kijakazi*, No. 1:22-cv-00495-BAM, 2023 WL 2752097, at \*4 (E.D. Cal. Mar. 31, 2023) (“Even if the ALJ’s decision is not a model of clarity, where the ALJ’s ‘path may reasonably be discerned,’ the Court will still defer to the ALJ’s decision.”) (*quoting Wilson v. Berryhill*, 757 Fed. Appx. 595, 597 (9th Cir. 2019)). “The standard isn’t whether our court is convinced, but instead, whether the ALJ’s rationale is clear enough that it has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th 489, 494 (9th Cir. 2022) (the clear and convincing standard requires an ALJ to show his work).

The ALJ may consider numerous factors in weighing a claimant’s credibility, including “(1) ordinary techniques of credibility evaluation, such as the claimant’s reputation for lying, prior inconsistent statements concerning the symptoms, and other testimony by the claimant that appears less than candid; (2) unexplained or inadequately explained failure to seek treatment or to follow a prescribed course of treatment; and (3) the claimant’s daily activities.” *Smolen*, 80 F.3d at 1284. In evaluating the credibility of symptom testimony, the ALJ must also consider the factors identified in SSR 16-3P. *Id.* (citing *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991)). Accord *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1226 (9th Cir. 2009). These factors include:

(1) Daily activities; (2) The location, duration, frequency, and intensity of pain or other symptoms; (3) Factors that precipitate and aggravate the symptoms; (4) The type, dosage, effectiveness, and side effects of any medication an individual takes or has taken to alleviate pain or other symptoms; (5) Treatment, other than medication, an individual receives or has received for relief of pain or other symptoms; (6) Any measures other than treatment an individual uses or has used to relieve pain or other symptoms (*e.g.*, lying flat on his or her back, standing for 15 to 20 minutes every hour, or sleeping on a board); and (7) Any other factors concerning an individual’s functional limitations and restrictions due to pain or other symptoms.

SSR 16-3P, 2017 WL 5180304, at \*7. *See* 20 C.F.R. § 404.1529(c)(3). If the ALJ’s finding is supported by substantial evidence, the court may not engage in second-guessing. *Tommasetti*, 533 F.3d at 1039 (citations and internal quotation marks omitted).

1 The clear and convincing standard is “not an easy requirement to meet,” as it is “the most  
 2 demanding requirement in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th  
 3 Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)). “A  
 4 finding that a claimant’s testimony is not credible must be sufficiently specific to allow a reviewing  
 5 court to conclude the adjudicator rejected the claimant’s testimony on permissible grounds and did  
 6 not arbitrarily discredit a claimant’s testimony regarding pain.” *Brown-Hunter v. Colvin*, 806 F.3d  
 7 487, 493 (9th Cir. 2015) (citation and internal quotation marks omitted).

8 “The fact that a claimant’s testimony is not fully corroborated by the objective medical  
 9 findings, in and of itself, is not a clear and convincing reason for rejecting it.” *Vertigan*, 260 F.3d  
 10 at 1049. See 20 C.F.R. § 404.1529(c)(2) (“[W]e will not reject your statements about the intensity  
 11 and persistence of your pain or other symptoms or about the effect your symptoms have on your  
 12 ability solely because the objective medical evidence does not substantiate your statements.”).  
 13 Rather, where a claimant’s symptom testimony is not fully substantiated by the objective medical  
 14 record, the ALJ must provide additional reasons for discounting the testimony. *Burch v. Barnhart*,  
 15 400 F.3d 676, 680 (9th Cir. 2005). “The ALJ must specify what testimony is not credible and  
 16 identify the evidence that undermines the claimant’s complaints – ‘[g]eneral findings are  
 17 insufficient.’” *Id.* (quoting *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998)).

18 However, the medical evidence “is still a relevant factor in determining the severity of the  
 19 claimant’s pain and its disabling effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).  
 20 The Ninth Circuit has distinguished testimony that is “uncorroborated” by the medical evidence  
 21 from testimony that is “contradicted” by the medical records and concluded that contradictions with  
 22 the medical records, by themselves, are enough to meet the clear and convincing standard.  
 23 *Hairston v. Saul*, 827 Fed. Appx. 772, 773 (9th Cir. 2020) (quoting *Carmickle*, 533 F.3d at 1161).

## 24 2. Parties’ Contentions

25 Plaintiff argues the ALJ erred in rejecting her symptomology testimony regarding upper  
 26 extremity pain and limitation absent “clear and convincing” reasons “[d]espite the extensive  
 27 objective evidence supporting significant limitations on lifting, carrying and reaching due to severe  
 28 pain and abnormalities in testing, imaging and examination findings[.]” (Doc. 18 at 17). Plaintiff

1 contends the ALJ failed to explain the significance of “normal” findings regarding gait, balance,  
2 muscle bulk and tone, and motor and sensory function when those issues were not testified to be at  
3 issue. (*Id.* at 18, 19). Plaintiff argues the ALJ mischaracterized the evidence regarding her range  
4 of motion of the back, neck, and bilateral upper and lower extremities as “normal” in failing to  
5 discuss abnormal findings in the record. (*Id.* at 19). Plaintiff contends the ALJ’s finding that she  
6 was “in no acute distress” is “not a clear and convincing reason to reject her symptomology  
7 evidence.” (*Id.* at 20). Plaintiff contends the ALJ failed to explain how her ADLs “translates into  
8 an ability to sustain substantial gainful activity[.]” (*Id.*).

9 Defendant contends that “[a]lthough the ALJ did not fully credit Plaintiff’s allegations, she  
10 nevertheless concluded that Plaintiff’s impairments resulted in significant work-related  
11 limitations.” (Doc. 21 at 22). Defendant contends the ALJ’s finding as to Plaintiff’s physical RFC  
12 limitation is supported by substantial evidence considering her review of Plaintiff’s allegations,  
13 medical evidence, ADLs, and medical opinion evidence. (*Id.*).

### 14 3. Analysis

15 The ALJ found that Plaintiff’s severe medical impairments—osteoarthritis of both knees,  
16 chondromalacia patella, migraine headaches, asthma, and multilevel degenerative disc disease of  
17 the spine—significantly limit her from performing basic work activities. (AR 38). The ALJ  
18 summarized Plaintiff’s subjective symptom testimony from the hearing:

19 [Plaintiff] reported pain in her back and neck related to an old injury. She endorsed  
20 pain in her whole body, including her joint, knees, neck, and back. She described  
21 it as sharp pains, worse with repetitive motions, including lifting and some personal  
22 care activities, and long driving. Moreover, she noted that she did her activities  
23 more slowly. She estimated that she could walk for thirty minutes at one time,  
24 stand for two to three hours at one time, and sit for thirty minutes at one time. By  
the hearing, these estimates had changed and she testified that she could stand for  
ten minutes, walk for five minutes, and sit for up to twenty minutes. She also  
testified that she had problems lifting, and she could only sometimes carry a gallon  
of milk.

25 (AR 41-42) (citations omitted). After finding that Plaintiff’s impairments could reasonably be  
26 expected to cause some of her alleged symptoms, the ALJ concluded that Plaintiff’s statements  
27 concerning the intensity, persistence, and limiting effects of her symptoms are not entirely  
28 consistent with the record. (AR 42); *see Treichler*, 775 F.3d at 1103 (noting that ALJs “routinely



1 include this [boilerplate] statement in their written findings as an introduction ... before  
2 [identifying] what parts of the claimant's testimony were not credible and why.”).

3 Here, in discounting Plaintiff’s testimony, the ALJ relied on the following: (1) Plaintiff’s  
4 statements were inconsistent with the objective medical evidence and (2) Plaintiff’s ADLs were  
5 consistent with the assessed RFC. (AR 43).

6 (a) Plaintiff’s purported inconsistent statements are not a clear and  
7 convincing reason to reject her symptomology testimony

8 The ALJ recited record findings to show Plaintiff’s symptomology testimony as to her upper  
9 body physical pain were inconsistent with the record. (AR 42) (“[H]er neck range of motion  
10 returned to normal”; [she] maintained normal ranges of motion in her lower back without  
11 tenderness”; [she] maintained good ranges of motion and strength in her shoulders”; “despite  
12 reported wrist pain, [she] maintained normal ranges of motion in her bilateral wrists”; “[she] would  
13 manage her neck pain with Tylenol”; and “[a]lthough she continued to report mild pain in her mid-  
14 back, she was comfortable without medications[.]”); (AR 43) (“[Plaintiff] had grossly normal  
15 ranges of motion in her back, neck, and bilateral upper and lower extremities”; “her hands and  
16 fingers also had normal ranges of motion and she had good hand coordination”; “[s]he was also  
17 able to make a fist”; “[she] had normal muscle bulk and tone with grossly normal strength”; “[f]or  
18 example, during 2017, [she] reported that she was able to lift two grocery bags and sit or stoop  
19 without problem”; “[she] also maintained normal motor and sensory function”; “[o]verall, [she]  
20 regularly appeared to be in no acute distress”). The ALJ considered these findings “consistent with  
21 her testimony that her medications helped lessen her physical pain, but it would not go away so she  
22 would be limited to the above-described [RFC].” (AR 43).

23 The ALJ also referenced records that substantiate Plaintiff’s alleged limitations as to upper  
24 body pain. (AR 42) (“[Plaintiff’s] March 2017 cervical spine showed multilevel degenerative  
25 changes, including partial straightening of the normal lordotic curve, multilevel endplate  
26 spondylosis, and multilevel disc space narrowing and osseous foraminal stenosis”; “[she] described  
27 constant pain in her neck and back”; “she suffered muscle spasms and was positive for tenderness”;  
28 “[a]ctivities including bending, lifting, and sitting long periods aggravated her pain”; “she was



1 positive for stiffness and a limited range of motion in her neck”; “[she] reported that she had  
2 increased back pain when she lifted above her shoulder”; “repetitive movements with her arms  
3 exacerbated her neck pain”; and “[her] neck pain radiated into her left trapezius and shoulder”).

4 The ALJ noted that Plaintiff “regularly suffered back, neck, and knee pain, which worsened  
5 with movements including lifting and prolonged standing, walking, or sitting” and therefore the  
6 ALJ limited Plaintiff to “light exertional work[.]” that she “can only occasionally climb ladders,  
7 ropes, or scaffolds, bend, and stoop[.]” and “can only occasionally push and pull or reach above  
8 shoulder level bilaterally.” (AR 41, 43). The ALJ noted that to “avoid exacerbating her neck and  
9 shoulder pain, [Plaintiff] should only occasionally reach overhead or push and/or pull bilaterally.”  
10 (AR 43). In making the assessment, the ALJ credits generally Plaintiff’s alleged “neck and  
11 shoulder pain” and cites to various findings in support, including that Plaintiff had “grossly normal  
12 strength” and “ranges of motion” in “her back, neck, and bilateral upper” extremities and “hands  
13 and fingers” that she reported she “was able to lift two grocery bags[.]” (AR 43). However, the  
14 ALJ failed to show Plaintiff’s allegations that she can only sometimes carry a gallon of milk  
15 “because it’ll slip from [her] hands ... [and] hurt [her] fingers all the way to [her] elbow” (AR 66),  
16 that using her arms and hands “hurts” in “brushing [her] hair” and “washing [herself]” (AR 67) and  
17 can only be used for about “five to ten minutes” at a time” (AR 68), or that she has pain in her  
18 “whole body, in [her] joints and ... neck, ... back, [and] low back” are somehow contradicted  
19 because records show that she “regularly appeared to be in no acute distress” or had “grossly  
20 normal” ranges of motion and strength and “could make a fist[.]” Indeed, courts have rejected an  
21 ALJ’s reliance on isolated statements in the medical record of acute distress while ignoring  
22 statements in those same notes describing chronic pain. *See Hernandez v. Comm’r of Soc. Sec.*,  
23 No. 1-22-cv-00188-CDB, 2024 WL 3470855, at \*5 (E.D. Cal. July 18, 2024) (citing cases).

24 The ALJ failed to show or explain why these general findings contradict Plaintiff’s pain  
25 testimony, or otherwise explain the relevance or significance of such findings. *Greger v. Barnhart*,  
26 464 F.3d 968, 972 (9th Cir. 2006). Thus, the ALJ failed to offer a clear and convincing reason to  
27 discount Plaintiff’s credibility on this basis.  
28

(b) Plaintiff's activities of daily living (ADL) do not provide a clear and convincing reason to reject her symptomology testimony.

An ALJ may reject a claimant's subjective symptom testimony if it is inconsistent with the claimant's activities of daily living. *Tommasetti*, 533 F.3d at 1039. There are two grounds on which an ALJ may use a claimant's daily activities to question a claimant's credibility as to her subjective symptoms: (1) when daily activities demonstrate the claimant has transferable work skills, and (2) when daily activities contradict the claimant's testimony as to the degree of functional limitation. *Orn*, 495 F.3d at 639. However, "disability claimants should not be penalized for attempting to lead normal lives in the face of their limitations." *Reddick*, 157 F.3d at 722; *see Smolen*, 80 F.3d at 1284 n.7 ("The Social Security Act does not require that claimants be utterly incapacitated to be eligible for benefits, and many home activities may not be easily transferable to a work environment where it might be impossible to rest periodically or take medication."). "The mere fact that a plaintiff has carried on with certain daily activities, such as grocery shopping, driving a car, or limited walking for exercise, does not in any way detract from [their] credibility[.]" *Webb v. Barnhart*, 433 F.3d 683, 688 (9th Cir. 2005) (quoting *Vertigan*, 260 F.3d at 1050). Regarding mental health issues, "[c]ycles of improvement and debilitating symptoms are a common occurrence," and an ALJ errs by "pick[ing] out a few isolated instances of improvement over a period of months or years and [] treat[ing] them as a basis for concluding a claimant is capable of working." *Garrison*, 759 F.3d at 1017.

Here, the ALJ found that Plaintiff's ADLs are consistent with her RFC. (AR 43). The ALJ noted that Plaintiff "was able to do her own cooking and cleaning" and "drive, shop, and perform personal care activities" but "would do such activities more slowly" and "she preferred to be independent and no one helped her around the house[.]" (*Id.*). The ALJ noted that Plaintiff's daughter "would help her lift heavier groceries[.]" (*Id.*). However, the mere fact that Plaintiff was able to carry on with these types of activities of daily living despite doing them more slowly does not detract from the credibility of her testimony. *Webb*, 433 F.3d at 688. Further, in identifying only the testimony she found consistent with the RFC, the ALJ failed to adequately explain how Plaintiff's described activities of daily living conflict with her alleged limitations or demonstrate

her ability to work. *See, e.g., Wilson v. Comm'r of Soc. Sec. Admin.*, 303 Fed. Appx. 565, 566 (9th Cir. 2008) (finding a plaintiff's occasional driving does not render him able to work); *Vertigan*, 260 F.3d at 1050 (finding "only a scintilla of evidence in the record to support the ALJ's finding that [plaintiff] lacked credibility about her pain and physical limitations" where the ALJ relied on Plaintiff's ability to go "grocery shopping with assistance, walk approximately an hour in the malls, get together with her friends, play cards, swim, watch television, ... read.... [and participate in] physical therapy for six months and exercise[ ] at home."); *Costa v. Berryhill*, 700 Fed. Appx. 651, 653 (9th Cir. 2017) ("The ability to accomplish daily tasks irregularly does not necessarily equate with an ability to work."). Thus, the Court cannot ascertain which of Plaintiff's symptom testimony the ALJ properly rejected based on the ADL evidence, or why. *See, e.g., Isis A. v. Saul*, No. 18cv01728-W-MSB, 2019 WL 3554969, at \*6 (S.D. Cal. Aug. 5, 2019) ("Because the ALJ did not identify any actual inconsistency in his opinion or describe his reasoning, the Court cannot ascertain which of Plaintiff's symptom and pain testimony the ALJ rejected based on the ADL evidence.") (citing *inter alia Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001)).

For these reasons, the ALJ did not identify a specific, clear, and convincing reason for discrediting Plaintiff's symptom testimony when she did not explain how those ADLs either contradicted Plaintiff's testimony or equaled transferable work skills.

**C. Whether the ALJ Erred in Failing to Identify and Resolve an Apparent Conflict Between the DOT and VE Testimony per SSR 00-4p**

*1. Governing Authority*

The ALJ bears the burden of making the necessary inquiry of the vocational expert ("VE"). *See* SSR 00-4p; *see Massachi v. Astrue*, 486 F.3d 1149, 1152-53 (9th Cir. 2007) ("SSR 00-4p unambiguously provides that '[w]hen a [VE] ... provides evidence about the requirements of a job or occupation, the adjudicator has *an affirmative responsibility* to ask about any possible conflict between that [vocational expert] ... evidence and information provided in the [*Dictionary of Occupational Titles* (DOT)].' SSR 00-4p further provides that the adjudicator '*will ask*' the [VE] 'if the evidence he or she has provided' is consistent with the [DOT] and obtain a reasonable explanation for any apparent conflict.") (quoting SSR 00-4p at \*4) (emphasis original). "Although

1 evidence provided by a vocational expert ‘generally should be consistent’ with the [DOT],  
2 ‘[n]either the [DOT] nor the [VE] ... evidence automatically ‘trumps’ when there is a conflict.”  
3 *Massachi*, 486 F.3d at 1153. “Thus, the ALJ must first determine whether a conflict exists. If it  
4 does, the ALJ must then determine whether the [VE’s] explanation for the conflict is reasonable  
5 and whether a basis exists for relying on the expert rather than the [DOT].” (*Id.*).

## 6 2. Parties’ Contentions

7 Plaintiff argues the ALJ erred in solely determining that the VE’s limitation to “occasional”  
8 overhead reaching would not erode the occupational role of housekeeper “without explanation and  
9 without specifically asking the VE how this [role], that rather logically requires ‘frequent’ reaching  
10 would allow for only ‘occasional’ overhead reaching.” (Doc. 18 at 22). Plaintiff contends the ALJ  
11 failed to identify this conflict and “make it clear” that she “had considered the reaching limitation  
12 and had reduced the numbers accordingly.” (*Id.*) Plaintiff argues had “the PRW of Housekeeper  
13 been eliminated based on [Plaintiff’s] RFC, the medical vocational rules would direct a finding of  
14 ‘disabled’ at step [f]ive, at either a light or sedentary RFC, given [Plaintiff’s] advanced age and  
15 lack of transferrable skills.” (*Id.* at 24).

16 Defendant contends there is no apparent or obvious DOT conflict. (Doc. 21 at 30).  
17 Defendant argues that Plaintiff’s contention—that “in her own interpretation of the demands of the  
18 occupation of [h]ousekeeper, overhead reaching is a ‘common and obvious part’ of the  
19 occupation”—is addressed by *Todd v. Saul*, 822 Fed. Appx. 613 (9th Cir. 2020), which shows  
20 “there is no apparent or obvious conflict between a limitation to occasional overhead reaching and  
21 the requirements of Plaintiff’s past work.” (*Id.* at 30-31).

## 22 3. Analysis

23 Here, the ALJ stated that the VE “did not specify any portions of her testimony that  
24 contradicted with the [DOT]” and the ALJ therefore “accepts her testimony in accordance with  
25 SSR 00-4p.” (AR 46). Because the ALJ determined that no conflict exists between the VE’s  
26 testimony and the DOT, the ALJ properly relied on that testimony in making her decision. Further,  
27 given the Ninth Circuit’s unpublished decision in *Todd*—holding that “[w]hile the ‘cleaner  
28 housekeeping’ occupation may require frequent reaching, it does not apparently and obviously

1 require frequent overhead reaching”—the Court similarly finds here that “[t]here is no apparent  
 2 and obvious conflict between the testimony from ... [the VE] that a person with [Plaintiff’s] RFC  
 3 could perform the ‘cleaner housekeeping’ job, which the ALJ accepted, and the [DOT’s] general  
 4 definition of duties.” *Todd*, 822 Fed. Appx. at 616. Thus, the ALJ did not err in relying on the  
 5 VE’s testimony pursuant to SSR 00-4p.

6 The Ninth Circuit addressed this same issue in its published decision in *Gutierrez*, in which  
 7 the VE testified an individual with above-shoulder reaching limitations could perform the job  
 8 requirements of cashier, which required frequent reaching according to the DOT. *Gutierrez v.*  
 9 *Colvin*, 844 F.3d 804, 807–08 (9th Cir. 2016). The court noted that not all jobs requiring frequent  
 10 reaching necessarily require reaching overhead, and that in the case of a cashier it was unlikely and  
 11 unforeseeable that it would require reaching overhead. *Id.* Accordingly, the court found no  
 12 apparent conflict between the VE’s testimony and the DOT.

13 Plaintiff argues that *Gutierrez* is distinguishable because, unlike the cashier jobs at issue in  
 14 *Gutierrez*, the requirement of overhead reaching is a “‘common and obvious’ part the job of  
 15 Housekeeper, DOT 323.687.014” and that the DOT for housekeeper expressly provides for  
 16 “frequent” reaching. (Doc. 18 at 19). However, for the same reasons expressed by the panel in  
 17 *Todd (supra)*, the Court here finds that the DOT for housekeeper does not apparently and obviously  
 18 require frequent “overhead” reaching.

19 **D. Whether the ALJ Erred in Failing to Find MDIs of Mental Impairments to be**  
 20 **Not “Severe” Impairments at Step Two**

21 *1. Governing Authority*

22 “In step two of the disability determination, an ALJ must determine whether the claimant  
 23 has a medically severe impairment or combination of impairments.” *Keyser v. Comm’r Soc. Sec.*  
 24 *Admin.*, 648 F.3d 721, 725 (9th Cir. 2011). A claimant has a severe impairment when the evidence  
 25 establishes that an impairment has more than a minimal effect on an individual’s ability to perform  
 26 basic work activities. *Webb*, 433 F.3d at 686; *Smolen*, 80 F.3d at 1290; 20 C.F.R. §§ 404.1522(a),  
 27 416.922(a) (“An impairment or combination of impairments is not severe if it does not significantly  
 28 limit your physical or mental ability to do basic work activities.”). The regulations define “basic

work activities” as “the abilities and aptitudes necessary to do most jobs,” which include physical functions such as walking, standing, sitting, pushing, and carrying, and mental functions such as understanding and remembering simple instructions; responding appropriately in a work setting; and dealing with changes in a work setting. 20 C.F.R. §§ 404.1522(b), 416.922(b).

In the Ninth Circuit, step two of the disability inquiry is “a de minimis screening device to dispose of groundless claims.” *Smolen*, 80 F.3d at 1290. Thus, “[i]f an adjudicator is unable to determine clearly the effect of an impairment or combination of impairments on the individual’s ability to do basic work activities, the sequential evaluation should not end with the not severe evaluation step.” *Webb*, 433 F.3d at 687 (citing SSR 85-28). Moreover, “once the ALJ finds the claimant has at least one severe impairment at Step Two, the ALJ must consider all the claimant’s impairments when formulating the claimant’s RFC, including those impairments the ALJ determined to be non-severe.” *Kim R.S. v. Kijakazi*, No., 2022 WL 1405429, at \*3 (C.D. Cal. May 4, 2022) (citing *Buck v. Berryhill*, 869 F.3d 1040, 1048-49 (9th Cir. 2017)). “Thus, even if an ALJ erred by finding a particular impairment to be non-severe at Step Two, the error is harmless so long as the limitations of that impairment are considered when formulating the claimant’s RFC.” *Id.* (citing cases).

Substantial evidence supports an ALJ’s finding that a claimant’s mental impairments are non-severe if (1) she properly considered the claimant’s mental health records, (2) she properly considered the Paragraph B criteria (*see supra* p. 4, n.3), and (3) the record supports her findings regarding the non-severity. *See Woods*, 32 F.4th at 794.

In rating the degree of limitation in each of the four functional areas, an ALJ “will use the following five-point scale: None, mild, moderate, marked, and extreme.” 20 C.F.R. §§ 404.1520a(c)(4), 416.920a(c)(4). If the ALJ rates the claimant’s limitations as “none” or “mild” in each of the four areas, the ALJ “will generally conclude that [the claimant’s] impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in [the claimant’s] ability to do basic work activities.” 20 C.F.R. §§ 404.1520a(d)(1), 416.920a(d)(1). Legal error occurs when an ALJ neglects to document her application of the paragraph B criteria or fails to include a specific finding as to the degree of limitation in any of the four functional areas.

1 *Lee v. Kijakazi*, No. 3:20-cv-01596-H-BGS, 2022 WL 913057, at \*4 (S.D. Cal. Mar. 29, 2022)  
2 (citing *Keyser*, 648 F.3d at 726).

3 2. *Parties' Contentions*

4 Plaintiff argues the ALJ erred in failing to find her mental MDIs of PTSD and major  
5 depressive disorder are “severe” impairments at step two because substantial evidence shows these  
6 impairments have a “more than minimal” effect on her ability to perform work activity. (Doc. 18  
7 at 24-25). Plaintiff contends that the ALJ failed to account for any psychological limitations  
8 resulting from the mental MDIs found throughout the record, including findings of her “chronic”  
9 PTSD, generalized anxiety disorder, and persistent, “severe,” “recurrent” depression, and otherwise  
10 consider her mental health testimony. (*Id.*). Plaintiff argues given “there is no treating, examining  
11 or even reviewing opinion regarding the severity or limitations imposed by [Plaintiff’s] psychiatric  
12 MDIs[,]” the “ALJ had a duty to develop the record” and send Plaintiff to a psychiatric consultative  
13 examination (“CE”) or “to contact her treating physicians for an assessment of her psychiatric  
14 limitations” instead of solely determining these impairments were “not severe” and only had a  
15 “mild” impact on her ability to sustain work activity, and the ALJ otherwise failed this duty. (*Id.*  
16 at 27).

17 Defendant contends substantial evidence supports the ALJ’s evaluation off Plaintiff’s  
18 mental impairments because the record was sufficient to evaluate the impairments and the ALJ  
19 therefore adequately considered the non-severe mental impairments at subsequent steps in the  
20 sequential evaluation. (Doc. 21 at 22). Defendant contends that the ALJ properly considered the  
21 “paragraph B” criteria in finding Plaintiff’s mental impairments were non-severe as no psychiatric-  
22 based abnormalities are documented in the record until October 2018—“well over a year after the  
23 alleged onset date”—and she thereafter received treatment that rendered “normal findings” aside  
24 “some abnormalities” and “incidents” as documented in the record. (*Id.* at 18). Defendant contends  
25 Plaintiff’s ADLs also support the ALJ’s finding given Plaintiff “lives  
26 alone[,] ... does her own cooking and cleaning” and “own activities ... without assistance” and all  
27 limitations to performing ADLs and working part-time are attributed to “her physical rather than  
28 mental impairments.” (*Id.* at 19).



3. *Analysis*

As noted *supra* (Section I.A), the ALJ found that Plaintiff's PTSD, anxiety disorder, and major depressive disorder, "considered singly and in combination, do not cause more than minimal limitation in Plaintiff's ability to perform basic mental work activities and are therefore non-severe." (AR 38-39). In making this finding, the ALJ found these mental impairments did not satisfy the "paragraph B" criteria as she found only mild limitations in each of the four broad areas of mental functioning and "the evidence does not otherwise indicate that there is more than a minimal limitation in [Plaintiff's] ability to do basic work activities." (AR 39-40). The ALJ then noted that the RFC assessment she made at Step Three "reflects the degree of limitation [she] has found in the 'paragraph B' mental function analysis." (AR 40).

As a preliminary matter, "if a claimant fails to raise an impairment at the administrative level, the ALJ is not affirmatively obligated to consider that impairment." *Kim R.S.*, 2022 WL 1405429, at \*4 (citing *Domingue v. Barnhart*, 388 F.3d 462, 463 (5th Cir. 2004) (finding ALJ's conclusion that claimant's depression was not a severe impairment to be supported by substantial evidence because claimant did not contend that her depression was a severe impairment at the administrative level). Here, Defendant correctly notes that Plaintiff did not address these mental impairments during the administrative hearing. (Doc. 21 at 20); *see* (AR 54-73). Nor did Plaintiff list these mental impairments on her requests for disability benefits and SSI and reconsideration. (AR 166-67, 170, 174-75). Accordingly, the ALJ did not err in finding Plaintiff's mental impairments to be non-severe because the ALJ was not obligated to consider the impairment under the present circumstances. *Kim R.S.*, 2022 WL 1405429, at \*4.

Plaintiff argues the ALJ erred in finding Plaintiff's mental impairments to be non-severe because the ALJ failed to account for any resulting limitations "as diagnosed by treating physicians and providers[.]" (Doc. 18 at 25). An ALJ, however, is entitled to find a mental impairment to be non-severe even if a plaintiff has received a formal diagnosis for that impairment. *See Jose S. v. Kijakazi*, Case No. 2:20-cv-09561-GJS, 2022 WL 837416, at \*2 (C.D. Cal. Mar. 21, 2022) ("[A] diagnosis alone does not establish disability."); *Drainan v. Berryhill*, No. CV 17-747-KS, 2018 WL 895445, at \*7 (C.D. Cal. Feb. 13, 2018) (finding that claimant's "diagnoses of Major

1 Depressive Disorder and Generalized Anxiety Disorder are insufficient to demonstrate that she has  
2 a severe mental impairment” at Step Two). The key inquiry is thus not whether the claimant has a  
3 diagnosis for a mental impairment, but rather whether there are findings by the medical sources to  
4 support that the mental impairment is “severe” under the paragraph B criteria. *See David F.M. v.*  
5 *Saul*, No. 5:20-cv-01362-AFM, 2021 WL 2646905, at \*3 (C.D. Cal. June 25, 2021). Here, although  
6 Plaintiff notes records from a behavioral health clinician characterizing her depression as “severe”  
7 and her PTSD as “chronic” (Doc. 18 at 20), Plaintiff does not explain why the diagnoses she cites  
8 to establish that her PTSD, anxiety, and depression are “severe” under the paragraph B criteria, nor  
9 does she identify additional limitations that should have been considered by the ALJ in making her  
10 determination. Further, the ALJ provided an adequate explanation for each functional area rating  
11 she gave under the paragraph B criteria to support her finding that Plaintiff’s mental impairments  
12 were not severe. (AR 39).

13 Specifically, the ALJ cited to Plaintiff’s mental health records showing she was regularly  
14 negative for confusion, presented with intact cognitive function, and was able to make sensible  
15 decisions with good judgment and reasoning, and also properly considered Plaintiff’s ability to  
16 perform necessary household activities such as cleaning in finding that Plaintiff’s mental  
17 impairments did not impose more than mild limitations on her functioning. This was a sufficient  
18 foundation on which the ALJ reasonably found Plaintiff’s mental impairments to be non-severe  
19 despite her diagnoses of depression, PTSD, and anxiety, and her findings are supported by  
20 substantial evidence. *Kim R. S.*, 2022 WL 1405429, at \*7 (citing *inter alia Woods*, 32 F.4th at 794).

21 Additionally, substantial evidence supports an ALJ’s finding that an impairment is not  
22 severe when medical records show that the claimant’s impairment has been controlled by treatment.  
23 *See, e.g., Huff v. Astrue*, 275 F. Appx. 713, 717 (9th Cir. 2008) (finding ALJ did not err in finding  
24 claimant’s depression to be non-severe because the ALJ reasonably relied on physician’s finding  
25 that claimant’s depression had improved with treatment); *Kenneth K. v. Berryhill*, No. 3:17-cv-  
26 01271-JR, 2018 WL 6991256, at \*4 (D. Or. Dec. 19, 2018) (finding ALJ’s determination that  
27 claimant’s diabetes was not a severe impairment was supported by substantial evidence because  
28 medical records showed her diabetes was “controlled”), *report and recommendation adopted by*

2019 WL 165700 (D. Or. Jan. 10, 2019). Here, the ALJ pointed to evidence in the record showing that though Plaintiff “often presented as depressed or sad” and “anxious[,] ... she progressed with treatment” and noted that “her mood was improving.” (AR 39). Such evidence of improvement constitutes substantial evidence to support the ALJ's finding that Plaintiff's alleged depression and anxiety were not severe. *Kim R.S.*, 2022 WL 1405429, at \*4. Accordingly, the ALJ reasonably found Plaintiff's mental impairments to be non-severe despite her diagnoses of PTSD, depression, and anxiety, and her findings are supported by substantial evidence.

\* \* \* \* \*

In sum, the ALJ failed to include work-related limitations in the RFC consistent with the nature and intensity of Plaintiff's alleged limitations as to the ability to reach, lift, push, pull, or carry in improperly rejecting her subjective symptomology testimony. While an ALJ's error may be harmless where she provides valid reasons for disbelieving a claimant's testimony in addition to invalid reasons (*Molina*, 674 F.3d at 1115 (citing cases)), here, the ALJ provided no valid reasons for rejecting Plaintiff's symptomology testimony. Accordingly, the error is not harmless.

#### **E. Remedy**

Plaintiff seeks to remand for payment of benefits or alternatively for a new hearing. (Doc. 18 at 27). Defendant contends that should the Court find error in the ALJ's analysis, the Court should remand for further proceedings. (Doc. 21 at 31). “The decision whether to remand for further proceedings or simply to award benefits is within the discretion of court.” *Trevizo*, 871 F.3d at 682 (*quoting Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). “Remand for further administrative proceedings is appropriate if enhancement of the record would be useful.” *Benecke v. Barnhart*, 379 F.3d 587, 593 (emphasis omitted) (9th Cir. 2004).

In this case, the ALJ erred by failing to offer clear and convincing reasons to reject Plaintiff's health symptomology testimony, and failing to sufficiently explain how Plaintiff's activities of daily living undermine her alleged limitations. Given these errors, the Court concludes that remand for further proceedings is warranted because additional administrative proceedings may remedy the deficiencies in the ALJ's decision noted herein.

///

1 **IV. CONCLUSION AND ORDER**

2 For the reasons set for above, the Court finds the ALJ erred in failing to apply the proper  
3 legal standards. Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's motion for summary judgment (Doc. 18) is **GRANTED**;
- 5 2. The decision of the ALJ (Doc. 12) is **REVERSED**;
- 6 3. This matter is **REMANDED** pursuant to sentence four of 42 U.S.C. §405(g) for  
7 further proceedings consistent with this decision; and
- 8 4. The Clerk of the Court is **DIRECTED** to enter judgment in favor of Plaintiff Maria  
9 Concepcion Nieto de Gianini and against Defendant Commissioner of Social  
10 Security.

11 IT IS SO ORDERED.

12 Dated: April 2, 2025

13   
14 \_\_\_\_\_  
15 UNITED STATES MAGISTRATE JUDGE